FEDERAL SEDITION BILLS.—The recent introduction of more than fifteen so-called "Peace Time Sedition Bills"[1] into the United States Congress is due to a fear of the inadequacy of existing law to protect the security and well-being of this country from the activities of radical agitators. That treason is punishable by the Federal government is generally recognized. But the constitutional limitation of "treason" is sharp and explicit,[2] and the statutory definition thereof, follows with exactness the language of the Constitution.[3] It has been held, under this statute, that in order that there shall be the "levying of war" which is essential to treason, there must be "a body of men actually assembled for the purpose of effecting by force a treasonable purpose"; enlistment of men to serve against the government is not sufficient; although when war is levied, all those who perform any part, however, minute, and who are actually leagued in the general conspiracy, are traitors.[4] So also it has been said that the sudden "assembling of men in order by force to defeat the execution of a law in a particular instance, and then to disperse, without the intention to continue together, or to reassemble for . . . defeating the law generally, in all cases, is not a levying of war", such as constitutes treason;[5] although a general armed resistance, with a view to defeating altogether the efficacy of or nullifying an act of Congress, is treason.[6] The early decisions which so properly limited the scope of treason, have given rise to the misconception in some quarters that acts less serious, but nevertheless subversive of the federal authority, are dispunishable.

Section 4[7] and more particularly Section 6[8] of the Federal Criminal

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[1]Nelson Bill, 66th Congr., 2nd Sess., S. 3448; Sterling Bill, S. 3317; Graham Bill, H. R. 11430; are those receiving most serious consideration.

[2]U. S. Constitution Art. III, § 3: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

[3]U. S. Criminal Code (1909) 35 Stat. 1788, c. 1 § 1; U. S. Comp. Stat. (1916) § 10165.

[4]*Ex parte* Bollman & Swartwout (1807) 8 U. S. 75, 126.

[5]Charge to Grand Jury,—Fugitive Slave Law (D. C. 1851) 30 Fed. Cas. No. 18,263 at p. 1015; cf. Charge to Grand Jury,—Treason (D. C. 1863) 30 Fed. Cas. No. 18,274 at p. 1044.

[6]"Whiskey Insurrection", United States *v.* Mitchell (C. C. 1795) 26 Fed. Cas. No. 15,788 at p. 1281; "Land Tax Rebellion", Case of Fries (C. C. 1799) 9 Fed. Cas. No. 5,126 at p. 840.

[7]U. S. Criminal Code, c. 1 § 4, 35 Stat. 1088, U. S. Comp. Stat. (1916) § 10168: "Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both; and shall, moreover be incapable of holding any office under the United States."

[8]U. S. Criminal Code, c. 1 § 6, 35 Stat. 1089, U. S. Comp. Stat. (1916) § 10170: "If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States contrary to the authority thereof, they shall each be fined not more than five thousand dollars, or imprisoned not more than six years, or both."

Code should dispel this misapprehension. The broad provisions of Section 37[9] and Section 332[10] of the same Code when taken as supplementary to the first two sections mentioned, seem to bring within the purview of the federal courts all conduct which up to this time has been considered criminal. Thus in order that there should be "insurrection" within the meaning of Section 4, "it is not necessary that there should be bloodshed; it is not necessary that its dimensions should be so portentous as to insure probable success."[11] Section 6 sometimes referred to as the "seditious conspiracy" section, makes punishable the conspiracy "to overthrow, put down . . . the government of the United States . . . or by force to prevent, hinder, or delay the execution of any law of the United States." Conflicting views as to the meaning of this statute are ably expressed in the case of *Baldwin* v. *Franks*,[12] by Chief Justice White for the majority, Mr. Justice Holmes and Mr. Justice Field for the minority. The majority of the court held that the force used or intended to be used must be brought to resist some positive assertion of authority by the government, while Mr. Justice Field said that concerted action nullifying a protection given by a federal Statute lay within the purview of the law. Whatever may have been the law before the passage of the original version of this act[13] as to the necessity for waiting until the resistance had consummated in an overt act,[14] it is clear that since that time we may regard as criminal, "not only combinations to overthrow the government, but conspiracies of mutual agreements, whether by few or many, public or private, forcibly to resist or even to delay the execution of any law".[15] And the statute has been said to obviate specifically the necessity of an attempt to consummate a treasonable act, in order that the conspirators may be held to account.[16] Some act is still necessary for a conviction of seditious conspiracy, but the act may be such as making out a list of names of conspirators[17] or mailing a letter.[18]

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[9]U. S. Criminal Code, c. 4 § 37, 35 Stat. 1097, U. S. Comp. Stat. (1916) § 10201: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

[10]U. S. Criminal Code, c. 14, § 332, 35 Stat. 1152, U. S. Comp. Stat. (1916) § 10506: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal."

[11]*In re* Charge to Grand Jury (D. C. 1894) 62 Fed. 828, 830.

[12]Baldwin *v.* Franks (1886) 120 U. S. 678, at pp. 693, 705.

[13]Act of July 31, 1861, c. 33; 12 Stat. 284.

[14]Charge to Grand Jury,—Treason, *supra*, footnote 4, at p. 1044. *Cf.* United States *v.* Hanway (C. C. 1851) 26 Fed. Cas. No. 15,299 at pp. 126 *et seq.*

[15]Charge to Grand Jury,—Treason and Piracy (C. C. 1861) 30 Fed. Cas. No. 18,277 at p. 1051.

[16]Charge to Grand Jury,—Treason (C. C. 1861) 30 Fed. Cas. No. 18,272, at pp. 1037-8.

[17]Phipps *v.* United States (C. C. A. 1918) 251 Fed. 879.

[18]Testimony of ex-Assistant U. S. Atty. Gen. Alfred Bettman, Hearing of the Committee on Rules of the House of Representatives on H. R. 11430, January 23, 1920.

Section 37 of the Criminal Code is supplementary to Sections 4 and 6. It, in effect, states the common law of conspiracy, making it applicable to Federal crimes. Its broad provisions have been a frequent basis of prosecution, and have been widely applied to seditious undertakings. Under this section the general scheme or conspiracy may be complete even though its details are not planned, and will be actionable if any overt act tending to effect its object has been committed.[19] It is not necessary that the conspiracy accomplish its illegal purpose,[20] nor is it essential that the overt act be itself a crime.[21] It has been held, furthermore, that the counseling of persons to commit a crime against the Federal government, may be a crime, though the counsel is of no effect and the crime is not committed.[22] It is to be noted, however, that Section 37 "is applicable only to conspirators, and therefore does not cover the case of one, acting alone, who induces another" to commit an offense.[23] Even this last situation, relatively unimportant as it may be, is covered in a large measure by Section 332. The construction placed upon its language is that the counseling therein punished must have been successful; *i. e.*, that the crime must have been committed by some one,[24] but that once the crime has been committed, all who aided in or counselled its commission are guilty as principals.[25]

It is difficult to ascertain what seditious acts or combinations looking towards seditious acts are outside the scope of the above statutes. The only situation dispunishable is that in which one man, acting entirely alone, counsels the commission of a Federal crime, and no crime of any sort is committed as a result of such counsel. It would seem that the present legislation gives to the Federal Government the power to protect itself from those combinations and acts which constitute a menace to its institutions. Further legislation, making criminal mere membership in societies[26]—however, pernicious these societies may be deemed to be—would seem to transcend the bounds of conspiracy and solicitation hitherto recognized by the genius of the common law; and to make actionable situations which have not heretofore been considered to present any clear or present danger of substantive evils.[27]

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[19]United States *v.* Baker (D. C. 1917) 243 Fed. 741; *Cf.* United States *v.* McHugh (D. C. 1917) 253 Fed. 224; United States *v.* Bryant (D. C. 1917) 245 Fed. 682.

[20]Goldman *v.* United States (1918) 245 U. S. 474, 477.

[21]United States *v.* Rogers (D. C. 1915) 226 Fed. 512, 514.

[22]United States *v.* Galleanni (D. C. 1917) 245 Fed. 977.

[23]See United States *v.* Prieth (D. C. 1918) 251 Fed. 946, 954.

[24]See United States *v.* Mills (1833) 32 U. S. 138, 142; see United States *v.* Sugar (D. C. 1917) 243 Fed. 423, 427.

[25]United States *v.* Snyder (C. C. 1882) 14 Fed. 554; Richardson *v.* United States (1910) 181 Fed. 1.

[26]See the Nelson Bill, S. 3448, § 2.

[27]*Cf.* Holmes, *J.*, in Schenck *v.* United States (1919) 249 U. S. 47, 52, 39 Sup. Ct. 247. See 20 Columbia Law Rev. 232.